IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION LD.NO.2496 OF 2004

Hyderabad (Sind) National Collegiate Board & Ors....Petitioners.
Vs.
State of Maharashtra & Ors. ...Respondents.

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Mr. J. S. Chandnani for the Petitioners.

Mr. R.M. Savant, GP for the Respondents.

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CORAM : DALVEER BHANDARI, C.J. &
DR.D.Y.CHANDRACHUD, J.

24th September, 2004.

P.C.:

The Petitioners are aggrieved by the fixation of fees by the Committee headed by Mr.Justice R.A. Jahagirdar, a former Judge of this Court. The tuition fees for the Third Petitioner, which is an Engineering College, have been fixed at Rs.33,000/- and the development fees at Rs.3,000/-, making a total of Rs.36,000/-. The Petitioners had proposed to charge an amount of Rs.45,500/- towards tuition fees, Rs.8,000/- towards development fees and Rs.2,000/- towards other fees, per annum.

2. The First Petitioner has been founded by Sindhi speaking persons who constitute a linguistic minority in the State of Maharashtra and, therefore, claims to be entitled to the protection of Article 30 of the Constitution of India. The Third Petitioner which is an Engineering College was established in 1983 and was conducting a Post B.Sc. (Tech) Course on aided basis from the Government of Maharashtra. Under a Government resolution dated 26th June, 2002 the Third Petitioner was permitted to conduct the B.E. Degree Course on an unaided basis. The Third Petitioner is imparting education in Electronics and Telecommunications Engineering, Computer Engineering and Instrumentation Engineering with an intake of 120 seats, which intake has been increased to 210 seats with effect from 2004 – 05. According to the Petitioners, the Third Petitioner has appointed qualified teaching staff in accordance with the norms of AICTE and the staff has been allowed pay scales and benefits admissible under the recommendations of the Fifth Pay Commission. The Third Petitioner is stated to have recently been granted permission to commence the B.E. (Bio-Medical) Course from the Academic Year 2004-05.

3. According to the petitioners, in response to a communication of the Committee, the Third Petitioner submitted necessary information by its letters dated 10th April 2004, and 27th July 2004. It has been stated in the petition that the Committee was apprised of the fact that the Third Petitioner was running in losses. The Petitioners are aggrieved by the decision of the Committee. It has been urged that the Committee has not found that the fee that was proposed by the petitioners would amount to profiteering. In the circumstances, it has has been urged that the Committee ought to have accepted the proposed fee and that the exercise that has been carried out by the Committee is contrary to the judgment of the Supreme Court in **T. M. A. Pai Foundation vs. State of Karnataka (2002) SCC 481.** Moreover, it has been submitted that the income and expenditure statement that was submitted by the Third Petitioner would demonstrate that there is no element of profiteering and that in fact the Third Petitioner was suffering losses.

4. This Court had occasion to consider a challenge to the fees fixation exercise carried out by the Committee in a batch of matters involving Medical Colleges and Colleges imparting

education in para medical courses. By our judgment and order dated 17th August 2004, we have permitted the institutions to place their objections before the Committee with the assistance of qualified Chartered Accountants. Having regard to the nature of objections and to the grievance of the institutions that the Committee had not afforded an opportunity to the institutions of even brief hearings before the fee fixation exercise was carried out, this Court was of the view that since these were essentially matters of account, it would be appropriate to permit the managements to bring to the notice of the Committee such of the objections which they may have within a period of three weeks. The Committee was requested to convene hearings at which the managements will place their objections before the Committee with the assistance of qualified Chartered Accountants. Permission was granted to the managements to produce documents and books of account in support as is envisaged in the judgment of the Supreme Court. The Committee was granted liberty to call upon the institutions to disclose such further information as was required. The Court clarified that the Committee may in its discretion permit an institution to be represented by Counsel in an appropriate case. We had directed that in the meantime until the Committee decided

upon the objections, the managements shall grant admissions to the students on the basis of the fee as allowed by the Committee. These fees shall, however, be interim fees and shall abide by the final decision of the Committee upon hearing the objections of the concerned Colleges. The Colleges were permitted while admitting students to take undertakings from each of the students that in the event of the fee that has been paid by the students being enhanced by the Committee, the difference shall be paid over by the students with a period of four weeks of being called upon to do so by the respective Colleges upon receipt of the decision of the Committee.

5. At the hearing of the present petition, learned counsel appearing for the Petitioners has submitted that at this stage without pressing the wider challenge in these proceedings, the petitioners would rest content if an order was passed in terms of the directions which were issued by this Court in its judgment dated 17th August 2004 in **N. K. P. Salve Institute of Medical Science and Research Centre vs. The State of Maharashtra,** (Writ Petition No.5805 of 2004) and connected matters. We found that this request is fair and proper. Having regard to the reasons which

weighed with us in our judgment dated 17th August 2004 and in view of the submissions which have been placed on record of the Court in the writ petition, we are of the view that it would be appropriate to permit the petitioners to place before the Committee such of the objections which they have within a period of three weeks from today. In terms of our judgment dated 17th August 2004, we request the Committee to convene a hearing at which the Petitioners may place their objections before the Committee with the assistance of a qualified Chartered Accountant. The Petitioners would be at liberty to produce documents and their books of account in support. The Committee would be at liberty to call upon the Petitioners to disclose such further information as may be required. Communications by the Committee may be addressed by registered post, facsimile, courier or e-mail and the Petitioners shall respond within the time stipulated failing which it shall be presumed that they have nothing further to add. The Committee would be entitled to structure the hearing so as to enable it to keep control over the process. The Committee may in its discretion permit the petitioners to be represented by Counsel if it so considers it appropriate. We record the statement which has been made on behalf of the Petitioners that, in the meantime, until

the Committee makes its determination, admissions shall be granted by the Third Petitioner on the basis of the fee as fixed by the Committee. This fee shall, however, be an interim fee and will abide by the final decision of the Committee upon hearing the objections of the Petitioners. The Third Petitioner while admitting students shall take undertakings from each of the students that in the event of the fee that has been paid by the students being enhanced by the Committee, the difference shall be paid over by the students within a period of four weeks of being called upon to do so by the College upon receipt of the decision of the Committee. We further direct that at this stage, the Third Petitioner College shall not be required to refund the difference between the fee which was charged for the Academic Year 2003-2004 and the fee that has been allowed by the Committee. We request the Committee to render its decision after considering the objections expeditiously, preferably within a period of three months. The Writ Petition shall accordingly stand disposed of in these terms since no other point has been pressed.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.